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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/691,056	10/21/2003	Joseph Anthony Perrotto	CL1453 US CIP	6093

23906 7590 08/27/2004

E I DU PONT DE NEMOURS AND COMPANY
LEGAL PATENT RECORDS CENTER
BARLEY MILL PLAZA 25/1128
4417 LANCASTER PIKE
WILMINGTON, DE 19805

EXAMINER

EDWARDS, NEWTON O

ART UNIT PAPER NUMBER

1774

DATE MAILED: 08/27/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/691,056

Applicant(s)

PERROTTO ET AL.

Examiner

N Edwards

Art Unit

1774

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-14 is/are pending in the application.
4a) Of the above claim(s) 5-14 is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-4 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☒ Claim(s) 1-14 are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. ____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date ____.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date ____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: ____.

Restriction to one of the following inventions is required under 35 U.S.C. 121:

- I. Claims 1-4, drawn to a yarn having non-drawn discontinuous filament and continuous filaments, classified in class 428, subclass 359.
- II. Claims 5-9, drawn to a yarn having drawn discontinuous filament and continuous filaments, classified in class 428, subclass 357.

If Group I is elected, applicant is required to elect a single disclose species in claim 1 for the discontinuous filament and continuous filaments.

- III. Claims 9-14, drawn to a yarn having non-drawn discontinuous filament and continuous filaments, classified in class 428, subclass 364.

The inventions are distinct, each from the other because:

Inventions Group I, Group II and Group III are unrelated. Inventions are unrelated if it can be shown that they are not disclosed as capable of use together and they have different modes of operation, different functions, or different effects (MPEP § 806.04, MPEP § 808.01). In the instant case the different inventions of Group I yarn does require drawn yarn.

Because these inventions are distinct for the reasons given above and have acquired a separate status in the art because of their recognized divergent subject matter, restriction for examination purposes as indicated is proper.

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During a telephone conversation with John Langworthy on May 24, 2004 a provisional election was made with traverse to prosecute the invention of Group I, claims 1-4. Affirmation of this election must be made by applicant in replying to this Office action. Claims 5-14 are withdrawn from further consideration by the examiner, 37 CFR 1.142(b), as being drawn to a non-elected invention.

In 1449 dated July 26, 2004 GB 924,086 was not considered since page 1 was not submitted. Applicant should note this reference may be applied against the claims and the case may be made FINAL.

In accordance with the election of specie requirement of May 24, 2004, John Langworthy elected nylon for the discontinuous filaments and polyester for the continuous filaments.

Claims 1-4 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 1, line 1 "a yarn comprising a consolidated fiber ..." is vague and indefinite as to how a consolidated fiber is made of discontinuous filaments and continuous filaments. To overcome this rejection simply says "a consolidated yarn comprising (a) discontinuous filaments etc"

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Claim 1, line 15 "different materials" is vague as to what it is different from (see claims 3 and 4 for the same problem).

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-4 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Adams (US 4,080,778).


For the record, a consolidated yarn is a yarn which has been entangled with two component filaments (see Adams Table II as authority).

Adams teaches an entangled yarn (consolidated) comprising a blend of polyester fibers and nylon fibers. Adam further teaches these fibers are produced by repeating the general procedure of Example 1. This means the nylon fibers may be stretch, broken to form discontinuous fibers and entangles with continuous polyester fibers yielding a consolidated yarn. See Example 1D, Table I, and Table II.

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The enclosed patents disclose the state of the prior art.

Any inquiry concerning this communication should be directed to Primary Examiner Edwards at telephone number (571) 272-1521.

N. Edwards/dh
August 20, 2004


N. EDWARDS
PRIMARY EXAMINER